

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

George A. Boyle, et al.,  
Plaintiffs,  
v.  
County of Kern, Estate of  
Stephen Tauzer, et al.,  
Defendants.

1:03-cv-05162-OWW-GSA

MEMORANDUM DECISION GRANTING  
DEFENDANT ESTATE OF STEPHEN  
TAUZER'S MOTION TO LIFT STAY  
(Doc. 63) AND GRANTING  
DEFENDANT ESTATE OF STEPHEN  
TAUZER'S MOTION TO DISMISS  
(Doc. 64)

I. Introduction.

The Estate of Stephen Tauzer ("Estate"), one of several defendants in this civil rights lawsuit, has filed a motion to lift a pending stay for the limited purpose of filing and for hearing a motion to dismiss the Estate. Both the motion to lift stay and motion to dismiss are presently before the court.

II. Background.

A. Factual Background.

1. Background of this Case.

The following facts are from the plaintiffs' first amended complaint ("FAC") as they relate to Stephen Tauzer's actions and the Estate. The plaintiffs in this case are George A. Boyle, the Law Offices of George A. Boyle ("Law Firm"), Noralee Boyle, Dean

1 J. Miller,<sup>1</sup> Victor VeVea, Alena VeVea, Ramona Guillen, Miriam  
2 Ruiz, and Giachino Family Enterprises. Plaintiff George Boyle  
3 and Dean Miller are attorneys licensed to practice law in  
4 California. Plaintiffs Noralee Boyle, Victor VeVea, Ramona  
5 Guillen, and Miriam Ruiz are employees or agents of the Law Firm.

6 The defendants are the County of Kern, City of Bakersfield,  
7 Office of the Kern County District Attorney, Bakersfield Police  
8 Department, Bakersfield City Manager Alan Tandy, Bakersfield  
9 Police Chief Eric Matlock, Kern County District Attorney Edward  
10 R. Jagels, Stephen Tauzer (deceased), Estate of Stephen Tauzer,  
11 Victoria Sharp, Scott Tunncliffe, Ralph Wyatt, and Does 1  
12 through 1,000. The individual defendants are sued in their  
13 individual and official capacities.

14 In 1998, Victor VeVea began researching allegations of  
15 inappropriate behavior by prosecutors, law enforcement personnel,  
16 and other members of the legal community, as well as a string of  
17 unsolved murders in Bakersfield, California. Victor VeVea kept  
18 copies of his research including photographs, notes, and data in  
19 a black plastic box. Victor VeVea disseminated his research to  
20 various members of the public. Victor VeVea also offered his  
21 homicide research to defendants Jagels and Tauzer, who declined  
22 his offer. Defendants Jagel and Tauzer were allegedly infuriated  
23 with the plaintiffs because of the research.

24 On September 21, 2001, Tauzer contacted Victor VeVea's co-  
25 workers or employers and accused or implied that Victor was

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27 <sup>1</sup> By stipulation and order filed August 3, 2005, Dean Miller  
28 dismissed his complaint, with prejudice, as to all defendants.  
(Doc. 58).

1 involved in criminal activity or unethical conduct. In early  
2 February 2002 and continuing until his death, Tauzer and others  
3 contacted various attorneys, law firm employees, judges, court  
4 personnel, law enforcement personnel, and others and accused or  
5 implied plaintiffs were involved in criminal or unethical  
6 conduct.

7 In February 2002, defendant Tunncliffe, a detective,  
8 prepared an affidavit in support of a request for a search  
9 warrant for Victor VeVea's office and house. Tauzer was one of  
10 several individuals who reviewed, edited, or approved the  
11 affidavit. Tauzer knew or should have known that the affidavit  
12 contained false or misleading statements and that material facts  
13 were intentionally or recklessly omitted when it was presented to  
14 a judicial officer to secure a search warrant. The judicial  
15 officer issued a warrant to search Victor VeVea's house, office,  
16 and certain vehicles using a special master (defendant Wyatt)  
17 under California Penal Code § 1524. As a result, VeVea's office  
18 was unlawfully searched with Tauzer's knowledge and approval.  
19 Various items were viewed, copied, or seized during the search of  
20 the office. Victor VeVea's house was also searched and one or  
21 more defendants did not permit him to see or read the affidavit  
22 and warrant. During the search of the house, the following items  
23 were seized: the black box containing Victor VeVea's research;  
24 one of defendant Tunncliffe's reports from a trial where Victor  
25 VeVea was an expert witness and criticized Tunncliffe's work;  
26 cards and letters between the VeVeas; photographs; clothes;  
27 cassette tapes; keys to a car; books; school records; a birth  
28 certificate; records, notes, and evidence from various court

1 cases; notepads, envelopes, pens, and pencils; and a telephone  
2 and fax machine. The warrant was defective on its face and did  
3 not provide probable cause to search the house. The search and  
4 seizure of the house was with Tauzer's knowledge and approval.  
5 Tauzer also had knowledge of and approved the search of the  
6 VeVeas' vehicles without probable cause. Several items were  
7 read, copied, or seized during the search of the vehicles.  
8 Victor VeVea was also searched, and one or more defendants  
9 refused to permit him to see and read the affidavit and warrant.  
10 On the same day as these searches, Victor VeVea alleges he was in  
11 custody for approximately five hours.

12 The black box contained Victor VeVea's research. Portions  
13 of the research were in a language or code that was  
14 unintelligible to an unskilled person. One or more of the  
15 defendants delivered the black box to Tauzer's residence, where  
16 Tauzer and Tunncliffe attempted to use various books to decipher  
17 Victor VeVea's research.

18 Plaintiffs assert eighteen causes of action against the  
19 various defendants including the following against the Estate:  
20 abuse of process, fraud, violation of civil rights, conspiracy to  
21 violate civil rights, invasion of privacy, false arrest, assault,  
22 slander, libel, trespass, trespass to chattel, conversion,  
23 interference with prospective economic advantage, infliction of  
24 emotional distress, and negligence. Plaintiffs seek compensatory  
25 damages according to proof at trial, \$50,000,000 in punitive  
26 damages, injunctive relief, attorney's fees, costs, and interest.

27 B. Procedural Background.

28 The plaintiffs filed their original complaint in this case

1 on February 23, 2003. Plaintiffs filed the FAC on March 21,  
2 2003. On April 10, 2003, defendant Ralph Wyatt filed a motion to  
3 dismiss, which the plaintiffs opposed. Defendant Wyatt's motion  
4 to dismiss was granted in part and denied in part, with leave to  
5 amend, on May 29, 2003. On October 10, 2003, plaintiffs' motion  
6 to compel further initial disclosures was granted.

7 The parties stipulated to stay the case due to criminal  
8 proceedings currently pending against plaintiff Victor VeVea in  
9 the case entitled *United States of America v. Victor VeVea*, case  
10 number 1:03-cr-05410-LJO. The parties stipulated to the stay  
11 because the results of the criminal proceeding could impact the  
12 viability of issues in this case. An order staying all  
13 proceedings in this case was entered February 4, 2004.<sup>2</sup> The stay  
14 continues in effect. The criminal case against Mr. VeVea  
15 concluded in the trial court on January 23, 2008, by Mr. VeVea's  
16 conviction on all charges.

17 The Estate filed the motion to lift stay and motion to  
18 dismiss on September 18, 2007. Counsel for defendants County of  
19 Kern, Office of Kern County District Attorney, Kern County  
20 District Attorney Edward R. Jagels, Stephen Tauzer, and Victoria  
21 Sharp ("County Defendants") filed a notice of non-opposition to  
22 the Estate's motion to lift stay on the condition that the motion  
23 be for the limited purpose of hearing and ruling on the motion to  
24

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25  
26 <sup>2</sup> Between February 4, 2004, and September 18, 2007, the date  
27 these motions were filed, the only activity in this case was the  
28 filing of two status reports and plaintiff Dean Miller's  
stipulation (and subsequent order) to dismiss the complaint as to  
himself only.

1 dismiss the Estate, and that the stay be reinstituted as  
2 previously stipulated. The County Defendants also filed a notice  
3 of non-opposition to the Estate's motion to dismiss. Plaintiffs,  
4 however, have not opposed the Estate's motion to lift stay or  
5 motion to dismiss.

### 6 III. Legal Standard.

7 Federal Rule of Civil Procedure 12(b)(6) provides that a  
8 motion to dismiss may be made if the plaintiff fails "to state a  
9 claim upon which relief can be granted." The question before the  
10 court is not whether the plaintiff will ultimately prevail,  
11 rather, it is whether the plaintiff could prove any set of facts  
12 in support of his claim that would entitle him to relief. See  
13 *Hishon v. King & Spalding*, 467 U.S. 69, 73 (1984). "A complaint  
14 should not be dismissed unless it appears beyond doubt that  
15 plaintiff can prove no set of facts in support of his claim which  
16 would entitle him to relief." *Van Buskirk v. CNN, Inc.*, 284 F.3d  
17 977, 980 (9th Cir. 2002).

18 In deciding whether to grant a motion to dismiss, the court  
19 "accept[s] all factual allegations of the complaint as true and  
20 draw[s] all reasonable inferences" in the light most favorable to  
21 the nonmoving party. *TwoRivers v. Lewis*, 174 F.3d 987, 991 (9th  
22 Cir. 1999); see also *Rodriguez v. Panayiotou*, 314 F.3d 979, 983  
23 (9th Cir. 2002). A court is not "required to accept as true  
24 allegations that are merely conclusory, unwarranted deductions of  
25 fact, or unreasonable inferences." *Sprewell v. Golden State*  
26 *Warriors*, 266 F.3d 979, 988 (9th Cir. 2001).

### 27 IV. Discussion.

#### 28 A. Estate's Request for Judicial Notice.

1 The Estate's motion to lift stay and motion to dismiss  
2 request the court to take judicial notice of five documents  
3 pertaining to the administration of defendant Stephen Tauzer's  
4 probate estate. Each document is separately listed below.

5 "A judicially noticed fact must be one not subject to  
6 reasonable dispute in that it is either (1) generally known  
7 within the territorial jurisdiction of the trial court or  
8 (2) capable of accurate and ready determination by resort to  
9 sources whose accuracy cannot reasonably be questioned." Fed. R.  
10 Evid. 201(b). "A court shall take judicial notice if requested  
11 by a party and supplied with the necessary information." Fed. R.  
12 Evid. 201(d). Judicially noticed facts often consist of matters  
13 of public record, such as prior court proceedings, *see, e.g.,*  
14 *Emrich v. Touche Ross & Co.*, 846 F.2d 1190, 1198 (9th Cir. 1988).  
15 A court may consider facts subject to judicial notice outside the  
16 pleadings in a motion to dismiss. *Mullis v. United States Bankr.*  
17 *Court for the Dist. of Nevada*, 828 F.2d 1385 (9th Cir. 1987)  
18 (citing *Mack v. South Bay Beer Distribs., Inc.*, 798 F.2d 1279,  
19 1282 (9th Cir. 1986)).

20 A court may take judicial notice of court records in another  
21 case. *United States v. Howard*, 381 F.3d 873, 876 fn. 1 (9th Cir.  
22 2004) (citing *United States v. Wilson*, 631 F.2d 118, 119 (9th  
23 Cir. 1980)). A federal court may take judicial notice of orders  
24 made in a state court proceeding. *See Miles v. California*, 230  
25 F.3d 986, 987 (9th Cir. 2003).

- 26 (1) The "Register of Actions/Case Docket" ("Probate Docket")  
27 in probate case number S-1500-PB51176, *Stephen Michael*  
28 *Tauzer Deceased* ("Probate Case"). The Probate Case was  
filed in the Metropolitan Division of the Kern County  
Superior Court on October 23, 2002.

1 The Probate Docket is a printout of the court's docket in  
2 the Probate Case. The Probate Docket contains numerous entries  
3 representing actions that took place during the probate of  
4 Stephen Tauzer's estate. The Probate Docket and its entries are  
5 not subject to reasonable dispute, and it is capable of accurate  
6 and ready determination by resort to a source whose accuracy  
7 cannot reasonably be questioned. The Probate Docket is the  
8 proper subject of judicial notice under Federal Rule of Evidence  
9 ("FRE") 201(b).

10 (2) The judgment in the Probate Case in which the court  
11 entered an order after a hearing granting the petition to  
12 terminate authority to act under the Independent  
Administration of Estates Act and authorizing a  
preliminary distribution.

13 This document is captioned as an order after a hearing on  
14 motions to bifurcate a request for attorney's fees and personal  
15 representatives fees and a petition to terminate the authority to  
16 act under the Independent Administration of Estates Act, and to  
17 make a preliminary distribution of the estate. The order states  
18 that the court held a hearing on these matters on September 23,  
19 2003, and Larry Cox appeared on behalf of the Estate and  
20 plaintiff Dean J. Miller appeared on behalf of himself and  
21 others. The court found that "Dean J. Miller and the parties he  
22 represents have waived the right to do so as to filing of a late  
23 creditor's claim." The court ordered, among other things, that  
24 Dean J. Miller's request for a continuance is denied, and that  
25 Dean J. Miller and the parties he represents "have waived any  
26 right they may have previously had to object."

27 This order is capable of accurate and ready determination by  
28 resort to a source whose accuracy cannot reasonably be

1 questioned. The order is the proper subject of judicial notice  
2 under Federal Rule of Evidence ("FRE") 201(b). The request is  
3 GRANTED.

4 (3) The judgment in the Probate Case in which the court  
5 entered an order after a hearing on the petitioner's  
6 motion to strike the creditors claim of the plaintiffs in  
this case (1:03-cv-05162-OWW-GSA).

7 This document is an order after a hearing on a motion to  
8 strike a creditor's claim. The hearing on this motion was held  
9 on August 19, 2003, and Larry Cox appeared on behalf of the  
10 Estate and Dean J. Miller appeared on behalf of himself and  
11 others. The order states:

12 IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that the  
13 motion to strike from the court's file the creditor's  
14 claim filed herein on July 29, 2003 by attorney DEAN J.  
15 MILLER on behalf of GEORGE A. BOYLE, et al, is granted  
provided, however, the granting is without prejudice as  
16 to the ability of the alleged creditors to file a  
petition to allow for the filing of a late creditor's  
claim.

17 IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that any  
18 such petition to allow for the filing of a late  
creditor's claim shall be set for hearing on September  
23, 2003, at 8:30 a.m., before COMMISSIONER LOUIS P.  
ETCHEVERRY.

19 IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the  
20 alleged creditors shall undertake any and all actions  
21 necessary to have the matter noticed for hearing and  
22 heard on September 23, 2003, at 8:30 a.m., before  
COMMISSIONER LOUIE P. ETCHVERRY, in the event the  
alleged creditors intend to pursue this matter.

23 This order is capable of accurate and ready determination by  
24 resort to a source whose accuracy cannot reasonably be questioned.  
25 The order is the proper subject of judicial notice under Federal  
26 Rule of Evidence ("FRE") 201(b). The request is GRANTED.

27 (4) The judgment in the Probate case in which the court  
28 entered an order terminating the personal representative

1 of the Estate's authority and authorized a preliminary  
2 distribution of the Estate.

3 This document is an order on a petition to terminate the  
4 administratrix's authority to act under the Independent  
5 Administration of Estates Act and to authorize a distribution to  
6 the sole heir of defendant Stephen Tauzer. The hearing on this  
7 petition was held on October 16, 2003. This order states:

8 IT IS ORDERED, ADJUDGED, AND DECREED THAT:

- 9 1. All acts and transactions of the Administratrix  
10 relating to the matters in the report are ratified,  
confirmed and approved.
- 11 2. The authority of the Administratrix to act under  
12 the Independent Administration of Estates Act is  
13 hereby terminated; and amended Letters of  
Administration shall be issued to the  
Administratrix.
- 14 3. The estate is but little indebted and a preliminary  
15 distribution can be made at this time without loss  
16 to creditors or injury to the estate or any person  
interested herein.
- 17 4. The Administratrix of this estate shall distribute  
18 the following property in the estate to the  
following person:
- 19 TO: MARY TAUZER, mother and sole heir-at-law of  
decedent:
- 20 1. Cash in the sum of \$90,000.
- 21 2. Household furniture, furnishings, and personal  
22 effects of decedent.
- 23 3. 1/14th interest in and to a family partnership  
known as the TAUZER FAMILY LIMITED  
24 PARTNERSHIP.
- 25 5. No bond is required of the distributee.

26 This order is capable of accurate and ready determination by  
27 resort to a source whose accuracy cannot reasonably be questioned.  
28 The order is the proper subject of judicial notice under Federal

1 Rule of Evidence ("FRE") 201(b). The request is GRANTED.

2 (5) A letter received by counsel for the Estate from Kern  
3 County Deputy Counsel that indicates that plaintiffs  
4 refuse to dismiss the Estate from this case  
(1:03-cv-05162-OWW-GSA) on the assertion that the state  
court proceedings are irrelevant to the federal claims.

5 The Estate did not attach a copy of this letter to its  
6 request for judicial notice. Judicial notice is improper if a  
7 court has not been "supplied with the necessary information."  
8 Fed. R. Evid. 201(d).

9 The Estate's request for judicial notice of the Probate  
10 Docket and orders in the Probate Case is GRANTED. The Estate's  
11 request for judicial notice of the letter received from the Kern  
12 County Deputy Counsel is DENIED.

13 B. Estate's Motion to Lift Stay.

14 The Estate requests the court to lift the stay in this  
15 proceeding for the limited purpose of filing a motion to dismiss  
16 it from this suit. The motion to dismiss is made on the grounds  
17 that no relief is available to the plaintiffs against the Estate  
18 because plaintiffs ignored the creditor's claim process that  
19 would have preserved their claim against the Estate.

20 A district court "has broad discretion to stay proceedings  
21 as an incident to its power to control its own docket." *Clinton*  
22 *v. Jones*, 520 U.S. 681, 706 (1997) (citing *Landis v. North*  
23 *American Co.*, 299 U.S. 248, 254 (1936)). "The power to stay  
24 proceedings is incidental to the power inherent in every court to  
25 control the disposition of the causes on its docket with economy  
26 of time and effort for itself, for counsel, and for litigants."  
27 *Landis*, 299 U.S. at 254. The corollary to this power is the  
28 ability to lift a stay previously imposed.

1 The probate estate was opened over five years ago and is now  
2 ready to be closed. The stay in this case was imposed by the  
3 parties' stipulation nearly four years ago. The beneficiaries of  
4 the Estate are entitled to finality, and this lawsuit continues  
5 to incur expenses for the Estate and prevents its closure. It is  
6 appropriate to allow the Estate an opportunity to have its motion  
7 to dismiss heard. Additionally, the plaintiffs have not filed an  
8 opposition brief to the Estate's motion to lift stay.

9 The Estate's motion to lift stay is GRANTED for the sole  
10 purpose of filing, hearing, and ruling on the motion to dismiss.

11 C. Estate's Motion to Dismiss.

12 The Estate filed this motion to dismiss on the grounds that  
13 no relief can be granted against the Estate in favor of the  
14 plaintiffs. The Estate contends plaintiffs cannot obtain relief  
15 against it because it has properly and duly rejected the  
16 plaintiffs' claim, the plaintiffs were fully aware of the claims  
17 rejection proceedings, and the plaintiffs neglected to file a  
18 petition to allow the filing of a late claim despite being aware  
19 of the need to do so and after being given permission by the  
20 probate court to do so.

21 The California legislature has enacted a comprehensive  
22 scheme designed to expedite the administration of estates while  
23 providing beneficiaries and administrators protection from  
24 unknown creditors. *Dobler v. Arluk Med. Ctr. Indus. Group, Inc.*,  
25 89 Cal. App. 4th 530, 534 (Cal. Ct. App. 2001). For example,  
26 there are provisions regarding the notice that must be provided  
27 to creditors, provisions that define the time periods within  
28 which claims must be filed, provisions regarding the filing of

1 creditor's claims, provisions defining the process for allowing  
2 or rejecting claims, and provisions addressing how claims in  
3 litigation are handled.

4 Filing claims against a decedent's estate provides a  
5 mechanism for paying the decedent's creditors. A claim "means a  
6 demand for payment for any of the following, whether due, not  
7 due, accrued or not accrued, or contingent, and whether  
8 liquidated or unliquidated: (1) [l]iability of the decedent,  
9 whether arising in contract, tort, or otherwise." Cal. Prob.  
10 Code § 9000(a)(1).

11 Section 9100 of the Probate Code provides for the time  
12 period for filing claims. Section 9100 provides:

13 (a) A creditor shall file a claim before expiration of the  
14 later of the following times:

15 (1) Four months after the date letters are first  
issued to a general personal representative.

16 (2) Sixty days after the date notice of administration  
17 is given to the creditor. Nothing in this  
paragraph extends the time provided in Section  
18 366.2 of the Code of Civil Procedure.

19 (b) A reference in another statute to the time for filing a  
claim means the time provided in paragraph (1) of  
20 subdivision (a).

21 (c) Nothing in this section shall be interpreted to extend  
or toll any other statute of limitations or to revive a  
22 claim that is barred by any statute of limitations.  
The reference in this subdivision to a "statute of  
23 limitations" includes Section 366.2 of the Code of  
Civil Procedure.

24 The Probate Code also provides a mechanism for filing late claims  
25 after the time periods of Probate Code § 9100 expire. Probate  
26 Code § 9103 provides in relevant part:

27 (a) Upon petition by a creditor or the personal  
28 representative, the court may allow a claim to be filed  
after expiration of the time for filing a claim

provided in Section 9100 if either of the following conditions is satisfied:

- (1) The personal representative failed to send proper and timely notice of administration of the estate to the creditor, and that petition is filed within 60 days after the creditor has actual knowledge of the administration of the estate.
- (2) The creditor had no knowledge of the facts reasonably giving rise to the existence of the claim more than 30 days prior to the time for filing a claim as provided in Section 9100, and the petition is filed within 60 days after the creditor has actual knowledge of both of the following:
  - (A) The existence of the facts reasonably giving rise to the existence of the claim.
  - (B) The administration of the estate.

\* \* \*

- (e) Notice of hearing on the petition shall be given as provided in Section 1220.

After a creditor files a claim against a decedent's estate, the personal representative must either allow or reject the claim in whole or in part. Cal. Prob. Code § 9250(a). The allowance or rejection of the claim must be in writing, and the personal representative must file such allowance or rejection with the court clerk and give notice to the creditor along with a copy of the allowance or rejection. Cal. Prob. Code § 9250(b).

Before a creditor may commence a lawsuit against an estate, the creditor must file a claim. The California Probate Code provides "[a]n action may not be commenced against a decedent's personal representative on a cause of action against the decedent unless a claim is first filed as provided in this part [§§ 9000 through 9399] and the claim is rejected in whole or in part." Cal. Prob. Code § 9351. "A timely filed claim is a condition

1 precedent to filing an action against the decedent's estate."  
2 *Dobler*, 89 Cal. App. 4th at 536. "In the event the personal  
3 representative rejects a creditor's claim, the claim is barred  
4 unless the creditor files suit against the decedent's estate  
5 within three months after rejection. *Id.* Filing a lawsuit  
6 against an estate is not the equivalent of filing a probate  
7 claim. *Van Ort v. Estate of Stanewich*, 92 F.3d 831, 841 (9th  
8 Cir. 1996) (citing *Wood v. Brown*, 39 Cal. App. 3d 232 (Cal. Ct.  
9 App. 1974)).

10 Turning to the facts of this case, plaintiffs do not have a  
11 valid claim against the Estate and are therefore barred from  
12 recovering money damages from the Estate. The relevant facts are  
13 straightforward and the dates are crucial. Defendant Stephen  
14 Tauzer was murdered on September 15, 2002. A petition to  
15 administer the estate of Stephen Tauzer was filed with the Kern  
16 County Superior Court on October 23, 2002. An order granting the  
17 petition to administer the Estate was entered on December 6,  
18 2002. Notice was provided to all creditors of the Estate as  
19 required by California Law.

20 On February 7, 2003, two months after the petition to  
21 administer the Estate was granted, plaintiffs filed this lawsuit  
22 and later filed the FAC on March 21, 2003, seeking to hold the  
23 Estate liable for various state law torts and civil rights  
24 violations under 42 U.S.C. § 1983. On June 16, 2003 a petition  
25 to terminate authority under the Independent Administration of  
26 Estates Act and to make a preliminary distribution was filed; the  
27 petition was set for hearing on July 21, 2003. A hearing on the  
28 petition was held on July 21, 2003, and the matter was continued

1 to July 31, 2003. On July 29, 2003, eight days after the July 21  
2 hearing, the Law Office of George A. Boyle filed a creditor's  
3 claim in an unascertained amount against the Estate; the claim  
4 was filed more than one month after the period for filing  
5 creditor's claims against the Estate had passed. At the July 31,  
6 2003, continued hearing on the petition to terminate authority  
7 under the Independent Administration of Estates Act and to make a  
8 preliminary distribution, attorney and plaintiff Dean Miller  
9 appeared. The hearing was continued again to August 19, 2003. On  
10 August 8, 2003, the Estate's personal representative filed a  
11 motion to strike the plaintiffs' creditor's claim. A corrected  
12 notice to strike plaintiffs' creditor's claim was filed August  
13 12, 2003.

14 The motion to strike plaintiff's creditor's claim was heard  
15 on August 19, 2003, and was granted. Plaintiff Dean Miller  
16 attended this hearing. The order granting the Estate's motion to  
17 strike plaintiffs' creditor's claim stated the motion to strike  
18 is granted without prejudice, so plaintiffs could file a petition  
19 to allow for the filing of a late creditor's claim. The order  
20 also required such petition to file a late creditor's claim be  
21 set for hearing on September 23, 2003, and that plaintiffs were  
22 required to undertake any actions to have the matter noticed for  
23 hearing and heard on such date. A hearing was held on September  
24 23, 2003, on several matters. Dean Miller appeared at this  
25 hearing. In the meantime, however, plaintiffs failed to file a  
26 petition for leave to file a late creditor's claim as required by  
27 the order rejecting plaintiffs' claim without prejudice. The  
28 court denied plaintiffs' request for a continuance and ordered

1 that Dean Miller and the parties he represents "waived any right  
2 they may have previously had to object." The court found that  
3 plaintiff Dean Miller and the parties he represents waived the  
4 right to file a late creditor's claim.

5 The Estate rejected the claim filed against it by  
6 plaintiffs. The Estate filed a motion to strike plaintiffs'  
7 claim in the probate court, and this motion was granted. After  
8 the probate court struck plaintiffs' creditor's claim, the court  
9 gave plaintiff Dean Miller the opportunity to file a petition to  
10 file a late creditor's claim and set it for hearing on September  
11 23, 2003. Instead of filing a petition to file a late claim and  
12 set it for hearing, plaintiff Dean Miller appeared at the  
13 September 23, 2003, hearing and requested a continuance. The  
14 probate court denied a continuance and found that plaintiffs  
15 waived the right to file a late creditor's claim. Because  
16 plaintiffs waived their right to file a claim and recover against  
17 the Estate in the probate proceedings, plaintiffs cannot recover  
18 money damages in this case against the Estate. It is appropriate  
19 to dismiss the Estate from this lawsuit as any claim is barred  
20 and no monetary recovery may be awarded against the Estate.

21 The Estate has also argued that the California Probate Code  
22 does not conflict with 42 U.S.C. § 1983 and is therefore not  
23 preempted by the Supremacy Clause. It is unnecessary to address  
24 this constitutional issue in great detail because it is  
25 inapplicable. Preemption arises when Congress intends to occupy  
26 a field, state law stands as an obstacle to the accomplishment of  
27 Congress's objectives, or it is impossible to comply with both  
28 state and federal law. See *Freightliner Corp. v. Myrick*, 514

1 U.S. 280, 287 (1995) (stating "[w]e have recognized that a  
2 federal statute implicitly overrides state law either when the  
3 scope of a statute indicates that Congress intended federal law  
4 to occupy a field exclusively, or when state law is in actual  
5 conflict with federal law. We have found implied conflict  
6 pre-emption where it is impossible for a private party to comply  
7 with both state and federal requirements, or where state law  
8 stands as an obstacle to the accomplishment and execution of the  
9 full purposes and objectives of Congress.") (citations omitted).  
10 Probate is inherently a matter of local concern reserved to the  
11 States. See *Witco Corp. v. Beekhuis*, 38 F.3d 682, 687 (3d Cir.  
12 1994) (noting "[s]ince probate matters traditionally have been  
13 nearly the exclusive concern of the states, there is a  
14 presumption against preemption of state law[,] and holding the  
15 Comprehensive Environmental Response, Compensation and Liability  
16 Act (CERCLA) does not preempt state nonclaim statutes governing  
17 administration of decedents' estates). There is no preemption  
18 issue. No federal probate code exists. Had plaintiffs followed  
19 the proper procedures in the state court probate proceedings and  
20 preserved a claim against the Estate, they could seek a monetary  
21 recovery in this case. No conflict exists under such  
22 circumstances; plaintiffs could have complied with both state and  
23 federal law.

24 The Estate's motion to dismiss it as a party from this  
25 lawsuit is GRANTED, WITH PREJUDICE.

26 V. Conclusion.

27 For the foregoing reasons,

28 (A) The Estate's request for judicial notice is GRANTED in

1 part and DENIED in part;

2 (B) The Estate's motion to lift stay is GRANTED for the  
3 sole purpose of filing, hearing, and ruling on the  
4 Estate's motion to dismiss. The stay shall otherwise  
5 remain in effect for all other purposes; and

6 (C) The Estate's motion to dismiss is GRANTED, WITH  
7 PREJUDICE, and the Estate is dismissed as a party from  
8 this lawsuit.

9 The Estate shall file an order that conforms with this  
10 memorandum decision within ten (10) days following service of  
11 this decision.

12  
13 IT IS SO ORDERED.

14 Dated: January 25, 2008

/s/ Oliver W. Wanger  
UNITED STATES DISTRICT JUDGE